

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

FIT4D, INC.,

Plaintiff,

v.

MY HEALTH, INC.,

Defendant.

Civil Action No.

JURY TRIAL DEMANDED

COMPLAINT

Plaintiff Fit4D, Inc. (“Fit4D”) hereby asserts the following claims against Defendant My Health, Inc. (“My Health”), a Delaware corporation, and alleges as follows:

NATURE OF THE ACTION

1. This is a declaratory judgment action arising under the Declaratory Judgment Act, 28 U.S.C. § 2201 *et. seq.* and the Patent Laws of the United States, 35 U.S.C. § 1, *et seq.* Fit4D seeks a declaration of non-infringement and invalidity of U.S. Patent No. 6,612,985 B2 (“the ’985 Patent”). A true and correct copy of the ’985 Patent is attached hereto as Exhibit A.

THE PARTIES

2. Plaintiff Fit4D is a Delaware corporation with operations in New York. Its principal place of business is located at 205 East 42nd Street, New York, New York, 10017.

3. Upon information and belief, Defendant My Health is a Delaware corporation duly organized and existing under the laws of the State of Delaware with offices at 7001 W. Parker Road, Suite 431, Plano, Texas 75093.

JURISDICTION AND VENUE

4. Upon information and belief, Defendant My Health is a Delaware corporation and has a registered agent with the State: National Corporate Research, Ltd., located at 615 S. DuPont Highway, Dover, Delaware 19901.

5. This action arises under the patent laws of the United States, 35 U.S.C. § 1, *et seq.*, with a specific remedy sought based upon the laws authorizing actions for declaratory judgment in the courts of the United States, 28 U.S.C. §§ 2201 and 2202. This Court has jurisdiction over this action pursuant to 28 U.S.C. §§ 1331, 1338(a) and 1367.

6. Defendant My Health is subject to personal jurisdiction in this judicial district because, upon information and belief, it is a Delaware corporation and regularly conducts business in the State of Delaware and in this District.

7. Venue is proper in this judicial district pursuant to 28 U.S.C. §§ 1391(b) and (c) and 1400 because, upon information and belief, My Health is a corporation organized and existing under the laws of the State of Delaware and resides in this judicial district pursuant to § 1391(c).

BACKGROUND

8. Fit4D is a technology platform that enables clinicians to educate patients on drug therapies, motivate better lifestyle choices, and provide the essential problem solving and emotional support required for people living with diabetes.

9. On or about September 16, 2016 (the “September 16 Correspondence”), Patent Licensing Alliance (“PLA”), acting on behalf of My Health, sent a letter to Fit4D regarding the ’985 patent that stated: “Your Fit4D employs the technology claimed and disclosed in United States Patent 6,612,985.”

10. The September 16 Correspondence further asserted that “[o]ur research group and legal team have thoroughly reviewed the Fit4D and believe that it utilizes the technology claimed and disclosed in the [’985 Patent]” and that “[t]he Patent requires a license if you intend to continue to sell these products.”

11. My Health attached a claim chart to the September 16 Correspondence that purported to outline My Health’s contentions of Fit4D’s alleged infringement.

12. The September 16 Correspondence further stated that “Because of . . . ever increasing instances of improper use without a license, My Health has been enforcing its intellectual property rights.” Further, My Health expressly reserved “the right to seek damages anytime within the last 6 years.”

13. On or about November 16, 2016 (the “November 16 Correspondence”), PLA, acting on behalf of My Health, sent an additional “updated” claim chart to Fit4D that also purported to outline My Health’s contentions of Fit4D’s alleged infringement.

14. Upon information and belief, between 2012 and the present, My Health has filed complaints in litigations against no fewer than 30 other companies involved in the health care industry alleging infringement of the ’985 Patent. These cases include: *My Health, Inc. v. Aspire Home Healthcare, Inc.*, C.A. No. 2:16-CV-00877 (E.D. Tex.); *My Health, Inc. v. McKesson Technologies Inc.*, C.A. No. 2:16-CV-00881 (E.D. Tex.); *My Health, Inc. v. MyNetDiary, Inc.*, C.A. No. 2:16-CV-00866 (E.D. Tex.); *My Health, Inc. v. DeVilbiss Healthcare, LLC*, C.A. No. 2:16-CV-00544 (E.D. Tex.); *My Health, Inc. v. ALR Technologies, Inc.*, C.A. No. 2:16-CV-00535 (E.D. Tex.); *My Health, Inc. v. InTouch Technologies, Inc.*, C.A. No. 2:16-CV-00536 (E.D. Tex.); *My Health, Inc. v. CardioNet, Inc.*, C.A. No. 2:14-CV-00681 (E.D. Tex.); *My Health, Inc. v. Biotronik, Inc.*, C.A. No. 2:14-CV-00680 (E.D. Tex.); *My Health, Inc. v. Tandem*

Diabetes Care, Inc., C.A. No. 2:14-CV-00684 (E.D. Tex.); *My Health, Inc. v. Health Dialog, Inc.*, C.A. No. 2:14-CV-00682 (E.D. Tex.); *My Health, Inc. v. LifeScan, Inc.*, C.A. No. 2:14-CV-00683 (E.D. Tex.); *My Health, Inc. v. Tunstall Healthcare USA, Inc.*, C.A. No. 2:14-CV-00685 (E.D. Tex.); *My Health, Inc. v. Pleio Health Support Systems, Inc.*, C.A. No. 2:14-CV-00661 (E.D. Tex.); *My Health, Inc. v. Sotera Wireless, Inc.*, C.A. No. 2:14-CV-00663 (E.D. Tex.); *My Health, Inc. v. Robert Bosch Healthcare Systems, Inc.*, C.A. No. 2:14-CV-00662 (E.D. Tex.); *My Health, Inc. v. Vivify Health, Inc.*, C.A. No. 2:14-CV-00664 (E.D. Tex.); *My Health, Inc. v. Nonin Medical, Inc.*, C.A. No. 2:14-CV-00660 (E.D. Tex.); *My Health, Inc. v. BodyMedia, Inc.*, C.A. No. 2:14-CV-00653 (E.D. Tex.); *My Health, Inc. v. Alere, Inc.*, C.A. No. 2:14-CV-00652 (E.D. Tex.); *My Health, Inc. v. Cardiomedix, Inc.*, C.A. No. 2:14-CV-00654 (E.D. Tex.); *My Health, Inc. v. Entra Health Systems, LLC*, C.A. No. 2:14-CV-00657 (E.D. Tex.); *My Health, Inc. v. Healthravageous, Inc.*, C.A. No. 2:14-CV-00658 (E.D. Tex.); *My Health, Inc. v. Confidant Hawaii, LLC*, C.A. No. 2:14-CV-00655 (E.D. Tex.); *My Health, Inc. v. Medisana AG*, C.A. No. 2:14-CV-00659 (E.D. Tex.); *My Health, Inc. v. Philips Medical Systems North America, Inc.*, C.A. No. 2:13-CV-00140 (E.D. Tex.); *My Health, Inc. v. GenerationOne, Inc.*, C.A. No. 2:13-CV-00138 (E.D. Tex.); *My Health, Inc. v. Click4Care, Inc.*, C.A. No. 2:13-CV-00137 (E.D. Tex.); *My Health, Inc. v. CardioCom, LLC*, C.A. No. 2:13-CV-00136 (E.D. Tex.); *My Health, Inc. v. Honeywell HomMed, LLC*, C.A. No. 2:13-CV-00139 (E.D. Tex.); and *My Health, Inc. v. ZeOmega, Inc.*, C.A. No. 2:12-CV-00251 (E.D. Tex.).

15. Additionally, upon information and belief, after receiving letters similar to PLA's September 16 Correspondence to Fit4D, ten other companies involved in the health care industry filed declaratory judgment actions in this and other judicial districts, seeking declarations of non-infringement and/or invalidity of the '985 Patent. These cases include: *Human Design Medical,*

LLC v. My Health, Inc., C.A. No. 3:16-CV-00036 (W.D. Va.); *Dexcom, Inc. v. My Health, Inc.*, C.A. No. 3:15-CV-00932 (S.D. Cal.); *Kurbo Health, Inc. v. My Health, Inc.*, C.A. No. 5:15-CV-01351 (N.D. Cal.); *Draeger Medical Systems, Inc. v. My Health, Inc.*, C.A. No. 1:15-CV-00248 (D. Del.); *Voxiva, Inc. v. My Health, Inc.*, C.A. No. 1:14-CV-00910 (D. Del.); *Authenticate Holding Corp. v. My Health, Inc.*, C.A. No. 1:13-CV-01616 (D. Del.); *Fitango, Inc. v. My Health, Inc.*, C.A. No. 1:14-CV-01085 (D. Del.); *Allscripts Healthcare Solutions, Inc. v. My Health, Inc.*, C.A. No. 1:14-CV-01436 (D. Del.); *HealthLoop, Inc. v. My Health, Inc.*, C.A. No. 3:15-CV-00671 (N.D. Cal.); and *Medecision, Inc. v. My Health, Inc.*, C.A. No. 3:15-CV-00726 (N.D. Tex.).

16. My Health's September 16 Correspondence, November 16 Correspondence, the numerous litigations filed, and the claims made by My Health over the past four years alleging infringement of the '985 Patent created a reasonable apprehension and substantial likelihood that My Health will sue Fit4D for the alleged infringement of the '985 Patent if Fit4D does not pay, and agree to enter into a license with, My Health.

THE PATENT-IN-SUIT

17. The '985 Patent, entitled "Method and System for Monitoring and Treating a Patient," issued on September 2, 2003, from U.S. Patent Application No. 09/793,191 filed February 26, 2001.

18. Upon information and belief, on or about April 23, 2001, the listed inventors Michael E. Eiffert and Lisa C. Schwartz, assigned their interests to the University of Rochester.

19. Upon information and belief, on or about April 1, 2014, the University of Rochester assigned its interest in the '985 Patent to My Health. Upon information and belief, between 2012 and April 1, 2014, My Health was the exclusive licensee of the '985 Patent.

CLAIM 1 — DECLARATION OF NON-INFRINGEMENT

20. Paragraphs 1 through 19 above are incorporated by reference as though fully stated herein.

21. My Health has alleged that Fit4D, at least through its manufacture, use, offers to sell, or sales of the Fit4D solution, is infringing the '985 Patent without authorization.

22. Fit4D has not infringed and does not directly or indirectly infringe any claim of the '985 Patent, either literally or under the doctrine of equivalents.

23. Particularly viewed in the light of My Health's litigious history, the allegations of infringement against Fit4D have created a substantial, immediate and real controversy between the parties as to the non-infringement of the '985 Patent. A valid and justiciable controversy has arisen and exists between Fit4D and My Health within the meaning of 28 U.S.C. § 2201.

24. A judicial determination of non-infringement is necessary and appropriate so that Fit4D may ascertain its rights regarding the '985 Patent.

CLAIM 2 — DECLARATION OF INVALIDITY

25. Paragraphs 1 through 24 above are incorporated by reference as though fully stated herein.

26. My Health has alleged that Fit4D is infringing the '985 Patent without authorization.

27. One or more claims of the '985 patent are invalid because they fail to meet the conditions of patentability and/or otherwise comply with one or more of 35 U.S.C. §§ 100 *et seq.*, including, but not limited to, 35 U.S.C. §§ 101, 102, 103 and 112. In particular, the '985 patent is invalid under 35 U.S.C. § 102 as anticipated by U.S. Patent No. 6,126,596 to Freedman and invalid under 35 U.S.C. § 103 as obvious over U.S. Patent No. 6,126,596 to Freedman in

view of U.S. Patent No. 6,024,699 to Surwit, World Intellectual Property Organization Publication No. WO 99/04043 to Caple, and World Intellectual Property Organization Publication No. WO 98/58338 to Graham.

28. Particularly viewed in the light of My Health's litigious history, the allegations of infringement against Fit4D have created a substantial, immediate and real controversy between the parties as to the invalidity of the '985 Patent. A valid and justiciable controversy has arisen and exists between Fit4D and My Health within the meaning of 28 U.S.C. § 2201.

29. A judicial determination of invalidity is necessary and appropriate so that Fit4D may ascertain its rights regarding the '985 Patent.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Fit4D prays for a declaration from this Court and judgment as follows:

- A. That Fit4D does not infringe any claims of the '985 Patent;
- B. That the '985 Patent is invalid and unenforceable;
- C. That this is an exceptional case within the meaning of 35 U.S.C. § 285; and
- D. Such other and further relief as this Court deems just, reasonable and proper.

JURY DEMAND

Fit4D demands a trial by jury on all issues presented in this Complaint.

Dated: November 22, 2016

Of Counsel:

Michael G. Strapp
DLA PIPER LLP (US)
33 Arch Street, 26th Floor
Boston, MA 02110-1447
Telephone: (617) 406-6031
Facsimile: (617) 406-6100
michael.strapp@dlapiper.com

DLA PIPER LLP (US)

/s/ Denise S. Kraft
Denise S. Kraft (DE No. 2778)
Brian A. Biggs (DE No. 5591)
1201 North Market Street, Suite 2100
Wilmington, DE 19801-1147
Phone: (302) 468-5700
Fax: (302) 394-2341
denise.kraft@dlapiper.com
brian.biggs@dlapiper.com

*Attorneys for Plaintiff
Fit4D, Inc.*